



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT KENYA

AT NAIROBI

CAUSE NO.E6512 OF 2020

RAPHAEL NJUGUNA KURIA.....CLAIMANT

VERSUS

SEVEN SEAS TECHNOLOGIES GROUP LIMITED.....RESPONDENT

RULING

The claimant filed application dated 29th August, 2020 under the provisions of Rule 17(1) and (8) of the Employment and Labour Relations Court (Procedure) Rules, 2016 and section 3 and 12(3) of the Employment and Labour Relations Court Act, 2011 and seeking for orders that;

The court be pleased to enter judgement on admission in favour of the claimant as against the respondent in the sum of ... Ksh.1, 192,544.95 together with interest at court rates as prayed in the Statement of Claim;

Cost of this suit and of the application be borne by the respondent.

The application is supported by the Supporting Affidavit of the Claimant and on the grounds that on 5th September, 2016 the claimant was employed by the respondent as Group Finance Manager at a basic salary of Ksh.355,000, Ksh.10,000 airtime allowance, and Ksh.10,000 as fuel allowance and payable monthly. On 6th September, 2019 the claimant resigned from his employment with the respondent due to failure by the respondent to pay his salary and leading to the claim herein for payment of Ksh.1,192,544.95 in terminal dues as at 19th March, 2019.

In the Supporting Affidavit the claimant avers that in a letter dated 19th March, 2019 the respondent unequivocally admitted to owing him the sum of Ksh.1, 192,544.95 in terminal dues less statutory deductions. The respondent then proposed a payment plan for the same in 18 equal instalments of Ksh.63, 252.00 each month. Despite undertaking, the respondent only paid two instalments leading a balance of Ksh.1, 013,528.03 which remain unpaid.

The claimant also avers that on 6th August, 2019 his advocates wrote demand to the respondent seeking the payment of his outstanding terminal dues and which the respondent failed to honour.

There is an admission which is clear and unambiguous and the court has jurisdiction to make an order directing the respondent to pay the due amount and the application seeking judgment on admission should be issued with costs.

In reply, the respondent filed the Replying Affidavit of Michael King'ori Macharia the chief executive officer (CEO) of the respondent and who avers that the claimant resigned from his employment and he made a payment proposal to settle his outstanding dues in 18 monthly instalments of Ksh.63, 252 each. The respondent had been awarded a contract by national government under the Ministry of Health on 2nd October, 2017 and which stalled in implementation in 2018 due to delay by the government. The proposal to settle the claimant's dues was an honest expectation that the respondent would get the contract performed and paid.

Mr Macharia also avers that the financial situation of the respondent was further aggravated when the national government failed to pay the respondent after completing work from the contract and proceeded to terminate it and forcing the filing of suit in High Court Case No.E479 of 2020 against the government to recover all monies due and seek compensation for termination of the contract.

The respondent has not received any payment from the government for the completion of phase 1 of the contract to date and upon which the undertaking to pay the claimant was premised. There are other claims from other former employees, Kenya Revenue Authority and suppliers with whom the respondent has made arrangements for amicable settlement. The respondent has reached out all affected employees and including the claimant to enjoin the government suit as interested parties.

The only remaining source of revenue is contract signed with GE East Africa Services Limited (GE) which was cut short in September, 2020 when GE terminated the contract. It was on the strength of this revenue that the respondent was able to pay the initial instalments to the claimant. For the termination, the respondent is seeking legal redress.

Mr Macharia also avers that The respondent is not able to settle the amounts due as undertaken and therefore requests the court to be allowed to settle the payments by instalments of ksh.20, 000 per month effective end of February, 2021 until determination of the court cases is made and or when the respondent is engaged in any additional revenue generating projects.

The respondent has come to court with clean hands and demonstrate and demonstrated *bona fides* by acknowledging the claimant's claim for payment of Ksh.1, 192,544.95 is due and owing and the proposal made is the best the respondent can be able to afford and there shall be prejudice economically if compelled to settle the sum at ones since there is no other income.

Mr Macharia also avers that the court has discretion to allow the respondent to settle the dues as proposed.

The claimant filed his Further Affidavit and avers that the respondent has not demonstrated good faith in its terms of paying the terminal dues owing and no reasonable offer has been made to him. There is material non-disclosure and the respondent has failed to disclose its financial position, asset base and other sources of income to enable the court assess whether or not it is in a position to pay the sum of Ksh.1, 192,544.95. There are several assets not disclosed and including motor vehicles KCC 940P, KBK 657C, KAT 816F, KMCR 171M and KCG 641Z. The respondent owns a block of building known as Delta Riverside Office Park on Riverside Drive land reference No.4275/121 which comprises of three floors which is leased in 1st and 2nd floors. The respondent receives \$430,000 quarterly from General Electric Health Kenya Limited and which has not been disclosed.

The claimant also avers that the respondent has failed to disclose if the government of Kenya is its only client. The picture painted that it is unable to pay is not honest.

Since 6th September, 2019 the respondent has had the time to pay the amounts due but has failed to do so and this demonstrate lack of good will. The offer to pay Ksh.63, 000 in 18 instalments has been due since September, 2019 leading to the claimant suffering and unable to support his family. This has denied him his employment dues contrary to fair labour practices and the application made should be allowed as prayed.

Determination

The claimant is seeking payment of his terminal dues following his claim herein and on which there is an admission by the respondent owing the sum of Ksh.1, 192,544.95.

The respondent, through the Replying affidavit of Mr Macharia the CEO has not denied the claim. There is confirmation that the claimant is owed Ksh.1, 192,544.95 and at paragraph 9 of the Relying Affidavit sworn on 18th February, 2021 he avers that;

The respondent has approached this court with clean hand and demonstrated bonafides by;

a. Acknowledging the Applicant's claim for payment of Kshs.1,192,544.95/= is due and owing.

b. ...

The respondent does not deny owing the claimant his terminal dues save to offer another plan to pay Ksh.20, 000 per month from February, 2021.

This is April, 2021. No indication there is payment as averred at paragraph 8 of Mr Macharia's Replying Affidavit.

In this regard, where there is a clear and unequivocal admission of any part of the claim or in its entirety, upon application, judgement is entered as the court deems just pursuant to Order 13 Rule 2 of Civil Procedure Rules which provides;

Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court admissions for such judgment or Order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such Order, or give such judgment, as the court may think just.

In Cannon Assurance (Kenya) Limited v Maina Mukoma [2018] eKLR the court held that;

The essence of this provision [Order 13 Rule 2] is to ensure that a party who is entitled to an admitted debt is not kept from the fruits of his judgment or made to incur unnecessary costs pursuing a full hearing. All that the Plaintiff is required to show is that there is a plain and obvious admission by the Defendant ...

In Cassam v Sachania [1982] KLR 191 the court held that;

Granting judgment on admission of facts is a discretionary power which must be exercised sparingly in only plain cases where the admission is clear and unequivocal... Judgment on admission cannot be granted where points of law have been raised and where one has to resort to interpretation of documents to reach a decision.

The claimant was the employee of the respondent. Unlike other relationships with regard to commercial transactions, sale of goods or land, employment comes with giving labour. The claimant gave his labours to the respondent and is owed his wages for work done.

In employment and labour relations the returns for labour go to the very root of one's life. It is the blood and sweat that drives one to report to work each day with a great hope that at the end of the day, the week or the month there will be a wage. Upon giving ones labour, the returns are a salary to sustain livelihood and secure dignity. Without the fulfilment or payment of the due wage, the employee is left desolate, distressed and psychologically tortured as to how to pay and meet basic needs to sustain life. This cannot wait for another day, week or month as the resultant consequences to bide the landlord has locked the door, the greengrocer will not led anymore and the shopkeeper is agitated and cannot give further credit. All dependent on the wage due to the single employee.

The life of the employee is crushed. He is forced to his knees literally. Begging.

The law regulating employment and labour relations is generous particular to the employer. Where employment is frustrated by an act beyond the control of the employer, the law allow a legitimate process of termination through redundancy.

Further where the parties are bound by a written contract of employment, like in this case, there is a clause allowing termination of employment upon notice. Employment can therefore terminate for good cause and at the instance of the employer taking into account the circumstances set out by the respondent in the Replying Affidavit of Mr Macharia.

These provisions allowing termination of employment were not invoked by the respondent. The claimant was forced to resign from his employment. His dues have not been paid since. In March, 2019 the respondent offered to pay in instalments. This was not followed through. The offer to pay from February, 2021 has not been actualised.

The application by the claimant is that judgement be entered on admission by the respondent that he is owed ksh.1,192, and 544.95. This is not denied. The offer to pay in instalments is empty.

At paragraph 8 of the Claimant's Supporting Affidavit he averred that he was paid in two instalments of Ksh.63,242 and what owes is Ksh.1,013,528.03 and which should be paid. On the claimed costs, these are due as the claimant has been forced to file suit to claim what is owed.

Accordingly, application dated 29th August, 2020 seeking judgement on admission in favour of the claimant against the respondent for the sum of ksh.1, 192,544.95 is found with merit and is hereby allowed. The respondent shall pay costs for the suit and the instant application together with interests at court rate from this date and until the money is paid in full.

DELIVERED AT NAIROBI THIS 29TH MARCH, 2021.

M. MBARU

JUDGE

In the presence of: